

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action mailed August 7, 2009, which has been reviewed and carefully considered.

Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-15 are pending in the application. Claim 1 is an independent claim. Claim 1 was amended to clarify its recitation. In particular a housing element was added. The housing element is identified by the numeral 2 in Figures 1a, 1b, and 2a and in the specification. Claim 15 is added by this amendment.

In the Office Action, claims 2, 4, and 5 are objected to for informalities. In response, these claims are amended in accordance with the Examiner's suggestions.

In the Office Action, claims 1, 2, and 6-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,508,817 to Altshuler ("Altshuler") in view of U.S. Patent Publication No. 2002/0022871 to Grahn ("Grahn"). Claims 3 and 4 are rejected under 35 U.S.C. §103(a) as being unpatentable over

Altshuler in view of Grahn and further in view of U.S. Patent No. 6,662,054 ("Kreindel"). Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over Altshuler in view of Grahn and further in view of U.S. Patent No. 6,325,792 to Swinger ("Swinger"). These rejections are respectfully traversed. It is respectfully submitted that claims 1-15 are allowable over Altshuler in view of Grahn alone and in view of any combination of Kreindel and Swinger for at least the following reasons.

Altshuler is directed to treating dermatologic problems. As pointed out in the Office Action, at col. 13, lines 20-21, with reference to Figures 6a and 6b, Altshuler discloses a "hose 100 that passes between plate 97" and waveguide 40 and is sealed therebetween . . ." and at col. 13, lines 29-31 "[i]n operation, once head 16 is in the position shown in FIG. 6a, vacuum is applied through hose 100 to chamber 99 to remove air therefrom." These teachings are distinguished from the invention of claim 1 because the hose 100 is positioned outside the Altshuler's device 16, while in the present application (see Figure 1a), a vacuum pump 11 is connected to a vacuum outlet 12 and to an exhaust pipe 13. Contrary to Altshuler, these elements are illustrated and described in the specification of the present application to be positioned

inside the housing 1.

Further, while admitting that Altshuler fails to teach a pressure gage for measuring pressure inside a recess, see page 3, lines 9-10 of the Office Action, paragraphs [0028] and [0039] of Grahn are referenced in the Office Action as teaching "a pressure gauge in the housing for measuring a pressure inside the recess" as recited in claim 1. However, a close examination of the referenced sections and the rest of Grahn's specification reveals that Grahn simply describes ports (118). As described in Grahn:

A first port may be utilized for connection to a vacuum source, while the second may be utilized for a vacuum gauge. Of course, alternate port placement is also possible. (See, Grahn, paragraph [0039].)

Thus, while in paragraph [0028] Grahn provides a list of sensory devices (the only mention throughout the Grahn specification), paragraph [0039] makes it apparent that any sensor is not internal to the apparatus as in claim 1, but rather is used through the ports (118).

The present apparatus, as for example recited in claim 1, is directed to an electromagnetic radiation delivery apparatus for skin treatment. The apparatus is self contained to a point of including the vacuum means as well as the pressure gauge within the housing of the apparatus. In claim 1 this is recited as (emphasis

added) "vacuum means in the housing for lowering a pressure inside the recess; and a pressure gauge in the housing for measuring a pressure inside the recess."

For the reasons discussed above, the combination of Altshuler and Grahn do not teach, disclose, or suggest the recitations of independent claim 1.

Kreindel and Swinger do not remedy the deficiencies of Altshuler and Grahn and, in any event, were not used in the rejection of the independent claim.

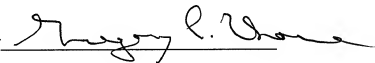
Accordingly, it is respectfully submitted that independent claim 1 is allowable, and allowance is thereof respectfully requested. In addition, it is respectfully submitted that claims 2- 15 should also be allowed at least based on their dependence from independent claim 1.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position,

should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

Gregory L. Thorne, Reg. 39,398
Attorney for Applicant(s)
October 28, 2009

THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101